THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1564 and 1565 of 2007

Dated:13.03.2007

Between:

S.A.Khader and another.

…Petitioners

and

The Commissioner and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1564 and 1565 of 2007

COMMON ORDER:

In these two writ petitions the Memos dated 23.01.2007 issued by the Mandal Revenue Officer, Asif Nagar Mandal, Hyderabad – the third respondent herein; are assailed as illegal, violative of Articles 21 and 300-A of the Constitution of India, and against the principles of natural justice. A consequential direction is also sought directing the respondents, namely, the Commissioner of Municipal Corporation of Hyderabad (MCH), the District Collector, Hyderabad, and the Mandal Revenue Officer, not to interfere with the possession of the petitioners over the house sites belonging to them.

The case of the petitioner in W.P.No.1564 of 2007 is as follows. The land comprised in Survey No.128 of Mallepally Village was owned by Sri Haricharan and others. They sold an extent of 1300 square yards to Sri Narne Veera Swami Naidu. After his death, his sons partitioned the property in 1973, and one of them, Dr.N.Surendra, sold 305 square yards in favour of the petitioner. The petitioner constructed a shed in the plot. The same was assessed to municipal tax vide Municipal No.10-5-2/7/D. The petitioner also purchased contiguous plot admeasuring 77 square yards in Survey No.128 (part), Ward No.10, Block No.I, from Sri Balram under registered sale deed and constructed a shed bearing Municipal No.10-5-2/7/D/A. The

petitioner is statedly using the plots for the business of fabrication machinery and construction equipment.

It is the case of the petitioner in W.P.No.1565 of 2007 that he purchased 197 square yards of land in Survey No.128 of Mallepally Village with House No.10-5-2/7/A & B under registered sale deed dated 01.03.1984 from Sri Subhash Singh. He is enjoying the property consisting of three rooms on the roadside and three rooms on the backside, where he is running oil shop and dry cleaning shop.

In both the cases the petitioners allege that in the year 2000 the revenue authorities asked them to vacate the land alleging that the land in their possession is Government land. The Revenue Divisional Officer filed cases under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'), being O.P.No.185 of 1990 and batch. These were dismissed by the Special Tribunal, which were confirmed by the Special Court constituted under the Act. However, to avoid complications, the petitioners approached the Government seeking regularization. The applications made by the petitioners are pending.

In November 2006 the MCH issued notices to the petitioners informing that the land to an extent of 10 to 15 feet would be affected in the road widening programme. They were asked to give consent and handover possession of the land affected by road widening. The petitioners were informed that they would be paid compensation or they would be allowed to avail concessions under G.O.Ms.No.483, Municipal Administration Department, dated 24.08.1998, for redevelopment of the balance area. The petitioners gave their consent, and a portion of the structures abutting the road was removed. The petitioners allege that while the shutters of the structures were being removed, the entire constructed portion collapsed. The petitioners, therefore, started construction of the compound wall to protect the equipment in the premises. The Mandal Revenue Officer approached the petitioners and allegedly demanded amounts. When the petitioners declined to pay the amounts, the Mandal Revenue Officer issued the impugned memos directing the petitioners to stop illegal construction immediately, failing which, action will be taken for removal of the illegal constructions. Therefore, the present Writ Petitions are filed.

At the stage of admission itself, the Mandal Revenue Officer filed counter affidavits in both the Writ Petitions, though they are in similar terms. Therefore, suffice to refer to the averments of the counter affidavit filed in W.P.No.1564 of 2007. As per the said counter

affidavit, the petitioner encroached the Government land in the premises situated at Masab Tank in T.S.No.1, Ward No.37, Block-F of Mallepally Village. He filed an application on 19.06.2006 for regularization of the encroachment under G.O.Ms.No.508, dated 20.10.1995, as extended by G.O.Ms.No.674, dated 08.06.2006. After examining the same, a report was submitted to the Revenue Divisional Officer for necessary action, and the same is under process. In the meanwhile, the petitioner without getting the encroachment regularized, started illegal construction on the Government land. This amounts to violation of conditions laid down in para 5 of G.O.Ms.No.508, dated 20.10.1995. In spite of several efforts to stop the construction on the Government land, the petitioner continued the construction work day and night on war footing basis. Therefore, the impugned memo was issued.

The petitioner in W.P.No.1564 of 2007 filed reply affidavit, *inter alia*, alleging that as he parted with land admeasuring about 115 square yards for road widening, he is entitled to reconstruct the collapsed shed and protect the machinery. A reference is also made to the order of this Court in W.A.No.509 of 1977, dated 18.09.1984, wherein this Court observed that possession of the petitioner's vendor cannot be disturbed.

Learned Counsel for the petitioners in both the cases submits that when the petitioners gave consent to MCH for giving a portion of the land affected by road widening, the machinery and the other equipment in the premises remains unprotected. When they were constructing the compound wall and a shed, the Mandal Revenue Officer prevented highhandedly, which is illegal and arbitrary. She submits that pending regularization of the occupation of the petitioners, if the petitioners are allowed to construct compound wall and shed to protect the machinery and other property, no prejudice would be caused to the respondents. She also relies on the observations made by this Court in W.A.No.509 of 1977 in support of the contention that the petitioners are entitled to protect their possession.

The petitioners filed the Writ Petitions seeking a direction to the respondents not to interfere with their possession over the property situated at Masab Tank. In the impugned memos the petitioners were only asked to stop construction pending consideration of their applications for regularization. The necessity for issuing the impugned memos has been mentioned in the impugned memos itself. It is, therefore, better to extract the impugned memo issued to the petitioner

in W.P.No.1564 of 2007, which reads as under.

Office of the
Mandal Revenue Officer
Asifnagar Mandal
Hyderabad

Ref:C/496/07 **Dated:23-1-2007**

MEMO

Sub: Government Lands-Encroachments Application filed for regularization of Government Land in Premises No.10-5-2/7/D/A by Sri S.A.Khader S/o.Mohd Ibrahim started illegal construction – Reg.

Ref: 1) Application of Sri S.A.Khader, Dated:19-06-2006

2) This office Lr.No.C/496/2006, dated:21-08-2006 submitted to R.D.O, Hyderabad. Under copy submitted to Collector Hyderabad District.

3) Report of M.R.I and Surveyor, dated –01-2007.

One Sri S.A.Khader S/o Mohd.Ibrahim has filed application for regularization of Government land encroached by him, under G.O.Ms.No.674 Dated:8-6-2006, admitting the fact that he has encroached the Government Land in Premises No.10-5-2/7/D/A to an extent of 67.76 Sq.Yards situated in T.S.No.1 Ward-37, Block F, of Mallepally Village. He also accepted to pay the Market value as decided by the Government.

The Application of Sri S.A.Khader S/o.Mohd Ibrahim has been examined by this office and report submitted to Revenue Divisional Officer, Hyderabad, for taking necessary action and the same is under process.

As things stood thus, the applicant Sri S.A.Khader S/o Mohd Ibrahim with out getting the encroached Government land regularized, started illegal construction work on the said Government land, which amounts to deliberate violation as they are not supposed to alter the structure/status of the land till disposed of the regularization case before the Collector.

In view of the above Sri S.A.Khader S/o.Mohd Ibrahim is hereby directed to stop the illegal construction work immediately, failing which action for removing the illegal constructions will be initiated with out assigning any reasons.

Mandal Revenue Officer,

Asifnagar Mandal.

The above memo reveals that i) the petitioners encroached the Government land; ii) the petitioners submitted applications for regularization of Government land encroached by them; and iii) the petitioners started construction without getting appropriate orders for regularization. These aspects are not denied. However, the learned Counsel for the petitioners submits that after the demolition of structures for road widening, the premises of the petitioners with machinery and other equipment remained unprotected, and therefore, construction is necessary. As contended by the learned Assistant Government Pleader, the petitioners are proceeding with the construction of big structures, which is in violation of Condition No.5 of G.O.Ms.No.508, dated 20.10.1995. G.O.Ms.No.508 was issued by the Government for regularization of encroachment on payment of market value. The benefit was extended subsequently under G.O.Ms.No.674, dated 08.06.2006. Paragraph No.5 of G.O.Ms.No.508 reads as under.

> All persons occupying Government land unauthorisedly, shall file and application to the District Collector in the prescribed format annexed to this order, giving full details of the encroachment, where the land is situated. The application shall be filed within 45 days from the date of issue of this order. The applicant shall indicate that he is prepared to get his possession regularized by paying the market value of the land as decided by the Government. After so applying to the Collector, the person occupying the land shall maintain status quo without altering the existing structure or raising a new structure. In case the said person does not comply with the above requirement, the Collector/Committee may bar such a person getting benefit under this G.O. Where no application is filed by a person within the stipulated time giving the information as mentioned above firm action shall be taken against such person and he shall be evicted from the Government land occupied by him.

A plain reading of the above condition would show that pending regularization orders, a person seeking regularization shall maintain *status quo* without altering the existing structure or raising new structure. Strictly interpreting, a person seeking regularization cannot even take up construction of compound wall even if it is demolished for road widening purposes. Though it is alleged in the counter affidavit that the petitioners are constructing not only the compound wall, but raising new structures, the same is not specifically denied in the reply affidavit.

Therefore, this Court does not find any irregularity or infirmity in the impugned memos issued by the Mandal Revenue Officer. The observations in W.A.No.509 of 1977, dated 18.09.1984, relied on by the learned Counsel for the petitioners would only lead to an inference that the vendor of the petitioner in W.P.No.1564 of 2007 had paid the necessary amount seeking regularization, and therefore, this Court observed that his possession cannot be disturbed. By impugned memos issued by the Mandal Revenue Officer, what is sought to be prevented is raising of new structures and there is no attempt to dispossess the petitioners.

The Writ Petitions are devoid of any merit and are accordingly dismissed. No costs.

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(V.V.S.RAO, J)

13.03.2007
vs